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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,812	05/01/2001	Albert E. Rickey	99-1042	6352
7590 10/27/2004				
Claudia Cameron Phoenix Technologies Ltd. 411 East Plumeria Drive San Jose, CA 95134			EXAMINER LANIER, BENJAMIN E	
			ART UNIT 2132	PAPER NUMBER 6
DATE MAILED: 10/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,812

Applicant(s)

RICKEY ET AL.

Examiner

Benjamin E Lanier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 8, 10-18, 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, U.S. Patent No. 5,537,540. Referring to claims 1, 10-12, 14, 20-22, Miller discloses a method of virus detection during the boot process wherein ROM routine reads the master boot record from the hard drive. The master boot record contains a partition table indicating the type, location and size of each hard disk partition (Col. 8, lines 3-12), which meets the limitation of storing code in the nonvolatile memory that is capable of reading the partition table in the master boot record stored in the mass storage device, using the stored code to read the master boot record, locate the partition table in the master boot table, locate a bootable partition within the partition table, and begin a boot process using the bootable partition.

Referring to claims 2, 4, 5, 15, 17, 18, Miller discloses that the computer system calculates a hash code or an MDC of the last track of the reserved non-DOS partition that contains the SROM routine. The computer system then determines whether the last track has been modified by comparing the computed hash code with a value stored in the partition (Col. 8, lines 18-29), which meets the limitation of using the stored code to check the master boot record stored in the mass storage device has been changed since a prior determination.

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Referring to claims 3, 16, Miller discloses that the master boot record is stored in the boot sector of the bootable partition (Col. 1, lines 51-56), which meets the limitation of the master boot record being stored in a secure area of the mass storage device.

Referring to claims 6, 8, Miller discloses that the calculated values could be checksums (Abstract).

Referring to claims 13, 23, Miller discloses that if the calculated hash and stored has differ, then the last track is restored (Col. 8, lines 30-38), which meets the limitation of when the value stored in the nonvolatile memory does not match the value calculated from the master boot record, using the stored code to update the master boot record.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 7, 9, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, U.S. Patent No. 5,537,540, in view of Menezes. Referring to claims 7, 9, 19, Miller discloses a

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method of virus detection during the boot process wherein ROM routine reads the master boot record from the hard drive. The master boot record contains a partition table indicating the type, location and size of each hard disk partition (Col. 8, lines 3-12), which meets the limitation of storing code in the nonvolatile memory that is capable of reading the partition table in the master boot record stored in the mass storage device, using the stored code to read the master boot record, locate the partition table in the master boot table, locate a bootable partition within the partition table, and begin a boot process using the bootable partition. Miller discloses that the calculated values could be checksums (Abstract). Miller does not disclose that the calculated value is a cyclic redundancy check. Menezes discloses that cyclic redundancy checks are commonly used checksums (Page 363). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use cyclic redundancy checks in the virus detection method of Miller because they provide significantly better error detection capabilities as taught in Menezes (Page 363).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin E Lanier whose telephone number is 703-305-7684. The examiner can normally be reached on M-Th 7:30am-5:00pm, F 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (703)305-1830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Benjamin E. Lanier



GILBERTO BARRON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100